

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

Honorable Christopher D. Jaime  
1200 I Street, Suite 200  
Modesto, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: December 7, 2021**

**CALENDAR: 1:00 P.M. CHAPTER 13**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

**December 7, 2021 at 1:00 p.m.**

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1. [20-90001](#)-B-13 CARLA TURNER MOTION TO MODIFY PLAN  
[JAD](#)-4 Jessica A. Dorn 10-21-21 [[108](#)]

**Final Ruling**

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7.04 of Debtor's plan provides that Trustee shall pay Class 2 creditor, Title Max, \$300.00 in month 21 (October 2021) from the funds on hand. As of November 16, 2021, Trustee records indicate the balance on hand is only \$196.21. Accordingly, Trustee is unable to administer Section 7.04 of Debtor's plan.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

**December 7, 2021 at 1:00 p.m.**

**Page 1 of 10**

2. [19-90803](#)-B-13 MARNIE FIELDS  
[LBF](#)-2 Lauren Franzella

MOTION TO MODIFY PLAN  
10-20-21 [[34](#)]

### **Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

**Final Ruling**

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6). Section 7 of Debtors' plan proposes a monthly payment of \$2,338.00 beginning October 2021. Debtors have failed to file supplemental Schedules I and/or Schedule J to support the plan payment. It cannot be determined whether the proposed plan is feasible.

Second, the motion and declarations are not plead with particularity and fail to address why the Debtors are delinquent in the amount of \$11,669.00 under the currently confirmed plan and why these funds were not paid to the trustee. Furthermore, without knowing the reasons for the delinquency, it cannot be determined if what caused the delinquency has been rectified and if Debtors will be able to make future plan payments. Additionally, the declarations in support of the motion to modify provide that the purpose of the plan is to extend the plan term; however, Debtors' declarations are devoid of any material evidence of financial hardship and why an extension of the plan is necessary.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4. [21-90418](#)-B-13 MIGUEL TERRIQUEZ OBJECTION TO DEBTOR'S CLAIM OF  
[RDG](#)-2 Richard L. Jare EXEMPTIONS  
10-29-21 [[34](#)]

CONTINUED TO 1/11/2022 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE  
OBJECTION TO HOMESTEAD EXEMPTION FILED BY CREDITOR GRISELDA SOLORZANO. See  
dkt. 49.

**Final Ruling**

No appearance at the December 7, 2021, hearing is required. The court will issue an  
order.

5. [21-90422](#)-B-13 JAMES RIDDLE  
[JNV](#)-2 Jason N. Vogelpohl

MOTION TO VALUE COLLATERAL OF  
LENDMARK FINANCIAL SERVICES,  
LLC  
11-5-21 [[34](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to deny without prejudice the motion to value collateral.

Debtor moves to value the secured claim of Lendmark Financial Services, LLC ("Creditor"). Debtor is the owner of a 2012 Toyota Yaris Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a value of \$6,800.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by Lendmark Financial Services LLC is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of \$9,313.57. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable.

However, the court finds issue with the Debtor's valuation. The Debtor's declaration states that the valuation of the Vehicle is based on a NADA.com web page snapshot but this is a third-party industry source and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

The Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for order directing disbursement of proceeds.

Debtors filed the instant motion seeking an order directing that the balance of Terry Cook's class action lawsuit, in the amount of \$10,655.00, be released to the Debtor. Debtors filed their chapter 13 bankruptcy case on September 26, 2012. Joint Debtor passed away on December 29, 2014. Debtor was able to maintain monthly plan payments and obtained a discharge on February 26, 2018.

Around March or April 2021, Debtor received a letter in the mail stating that he had been awarded compensation in a class action lawsuit in which he was listed as a driver. Debtor had no knowledge that he was listed as a driver or included as a plaintiff in the class action lawsuit prior to receiving the letter. Debtor was not driving for Wal-Mart when the lawsuit was originally filed in 2008 and did not start driving for Wal-Mart until 2012.

After notifying his attorney's office of the situation, Debtor understood that his cases needed to be reopened to amend his schedules to list and exempt the class action lawsuit that was inadvertently omitted in his bankruptcy. At the request of Debtor's attorney, Debtor contacted his CPA to determine how much was going to get taxed on those funds, which will be approximately \$4,412.26. Net proceeds will be approximately \$12,557.88. On October 25, 2021, Debtor filed amended Schedules A/B and C to list and claim exempt \$10,655.00 in judgment proceeds.

At the end of Debtor's case, filed and allowed general unsecured claims had been paid \$11,101.87, which was a dividend of approximately 79%. While there is a small amount of judgment proceeds non-exempt after Debtor claimed \$10,655.00 exempt under California Code of Civil Procedure § 703.140(b)(5), liquidation was not and is not affected. Filed and allowed general unsecured creditors received more than what was necessary to be paid for the plan to meet liquidation.

Therefore, for cause, the motion is granted and the judgment proceeds may be released and paid to Debtor in the exempt funds totaling \$10,655.00.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

7. [21-90442](#)-B-13 THOMAS GILLIS  
[CLB](#)-1 Pro Se  
**Thru #10** OBJECTION TO CONFIRMATION OF  
PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
10-29-21 [[13](#)]

**Final Ruling**

The Debtor having filed a notice of withdrawal of his proposed chapter 13 plan, the objection to confirmation is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

8. [21-90442](#)-B-13 THOMAS GILLIS  
[RDG](#)-1 Pro Se  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-10-21 [[28](#)]

**Final Ruling**

The Debtor having filed a notice of withdrawal of his proposed chapter 13 plan, the objection to confirmation is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

9. [21-90442](#)-B-13 THOMAS GILLIS  
[UST](#)-1 Pro Se  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-5-21 [[18](#)]

TRACY DAVIS VS.

**Final Ruling**

Debtor Thomas Gillis filed a non-opposition to the U.S. Trustee's motion for relief from automatic stay to allow debtor's appeal before the district court to proceed. Therefore, the motion is granted. The matter will be resolved without oral argument. No appearance at the hearing is required.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.



10. [21-90442](#)-B-13 THOMAS GILLIS  
[UST](#)-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY UNITED STATES TRUSTEE  
TRACY HOPE DAVIS  
11-10-21 [[24](#)]

**Final Ruling**

The Debtor having filed a notice of withdrawal of his proposed chapter 13 plan, the objection to confirmation is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

11. [21-90361](#)-B-13 RASVINDER BAHIA CONTINUED OBJECTION TO  
[RDG](#)-1 David C. Johnston CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
10-5-21 [[17](#)]

**Final Ruling**

The case was dismissed on December 1, 2021. Therefore, the continued objection to confirmation is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

12. [21-90345](#)-B-13 BALJEET SINGH  
[RDG](#)-1 David C. Johnston

CONTINUED MOTION TO DISMISS  
CASE  
11-10-21 [[36](#)]

**Final Ruling**

This matter was continued from November 30, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 3, 2021. Debtor filed a first amended plan on December 3, 2021, with a scheduled confirmation hearing date of January 18, 2021, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 40 and the continued hearing on December 7, 2021, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.